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Before the
FEDERAL COMMUNICATIONS COMMISSION JAN 13 1995

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Implementation of
Section 309(j) of the
Communications Act -
Competitive Bidding
Narrowband PCS

)
) PP Docket No. 93-253
)
)
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To: The Commission

**COMMENTS IN RESPONSE TO
THIRD MEMORANDUM OPINION AND ORDER
AND FURTHER NOTICE OF PROPOSED RULEMAKING**

I. INTRODUCTION

1. The United States Interactive & Microwave Television Association ("USIMTA") and the United States Independent Personal Communication Association ("USIPCA")^{1/}, pursuant to Sections 1.415 and 1.419 of the Commission's Rules and Public Notice, DA 94-1560, released December 21, 1994, submit these comments in response to the Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking ("FNPRM"), released August 17, 1994, PP Docket No. 93-253, FCC 94-219.

^{1/} USIMTA/USIPCA are nonprofit associations comprised of wireless cable TV operators, interactive TV operators, specialized mobile radio operators, paging operators, licensees, license applicants, equipment manufacturers, small businesses and designated entities.

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2. USIMTA/USIPCA urge the Commission to adopt very aggressive measures to ensure maximum participation in the narrowband PCS auctions by small businesses and other designated entities. Small businesses, women and minority-owned businesses have historically been excluded from participation in the telecommunications industry. To rectify the underrepresentation of small businesses and other designated entities in the telecommunications industry, Congress enacted Section 309(j)(4)(D) of the Communications Act which requires the Commission to ensure that small businesses and other designated entities are given the opportunity to participate in the provision of spectrum-based services.

3. While the Commission is to be commended for its proposals in the narrowband PCS licensing proceeding that are designed to facilitate small business and other designated entity participation in the narrowband PCS license auctions, the proposals made in the FNPRM and Public Notice are insufficient to provide small businesses with a truly meaningful opportunity to participate in spectrum-based services. In order to encourage maximum participation by entities that have historically been excluded from telecommunications, the Commission should: (1) define small business as an entity that has no more than a \$6 million net worth and after federal income taxes does not have in excess of \$2 million in annual profits for the previous two years; (2) make all remaining narrowband

PCS licenses available to qualifying designated entity bidding credits, tax certificates and installment payments; (3) retain BTA licenses; and (4) auction the BTA licenses before auctioning the MTA licenses. Adopting these measures is clearly within the public interest of providing opportunities to small businesses and other designated entities that have been and still are under-represented in the telecommunications industry.

II. The Eligibility Requirements For Participating In The Proposed Entrepreneurs' Blocks And Definition Of Small Business Should Be Altered To Conform With Traditional Small Businesses

4. In the FNPRM, the Commission proposes to set the financial cap for an entity's eligibility to bid in the proposed narrowband entrepreneurs' block at \$125 million in gross revenues and less than \$500 million in total assets. (§ 79, p. 37) The Commission has erroneously concluded that the \$125 million gross revenue/\$500 million asset caps will have the effect of excluding the large companies that would easily be able to outbid typical designated entities and frustrate Congress' goal of disseminating licenses among a diversity of licensees. To the contrary, the standards proposed by the Commission effectively allow relatively large companies to compete with the smallest of companies that are more likely to be owned by women and minorities. The net result of this will undoubtedly be that companies that are just under the cap will

outbid companies that are far below, notwithstanding the ability of the smaller companies to raise capital.

5. Similarly, the Commission's proposed financial definition of small business to be used in the proposed entrepreneurs' block should be altered in accordance with the definition of small business as determined by the Small Business Administration ("SBA"). In the Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348, ¶267, released April 20, 1994, the Commission correctly adopted the SBA definition of small business as an entity that has no more than a \$6 million net worth and after federal income taxes does not have in excess of \$2 million in annual profits for the previous two years. However, in the FNPRM the Commission proposes using a \$40 million gross revenue standard and a \$500 million (i.e., one-half billion dollars) cap in total assets for small businesses that bid in the proposed entrepreneurs' block. Businesses that qualify using the proposed standard would be eligible for a 10% bidding credit and installment payments.

7. The \$40 million gross revenue standard for small businesses makes a mockery of Congress' goal of providing small businesses and other designated entities with an opportunity to participate in spectrum-based services. Congress specifically identified small businesses as one of the under-represented groups in telecommunications for which opportunities to

participate in spectrum-based services must be granted.^{2/} The Commission is not fulfilling Congress' mandate by ostensibly offering assistance to small business while at the same time modifying the definition of small business so that the pool of qualifying applicants is larger. If the applicant pool is increased, the companies that have traditionally been considered "small" by SBA standards are once again placed at a competitive disadvantage against companies that are likely to be substantially larger. The Commission should adopt the traditional SBA \$6 million net worth definition of small business in order to maintain a smaller applicant pool of companies that are truly small since this is the group of businesses that historically has not been a major participant in the telecommunications industry.

III. The Bidding Credits, Installment Payments, And Tax Certificates That The Commission Proposes To Utilize In The Entrepreneurs' Block Should Be Available To Qualifying Bidders For All Licenses.

8. In addition to providing bidding credits, installment payments, and tax certificates to designated entities that bid in the entrepreneurs' blocks, the Commission should grant the same benefits to qualifying designated entities that bid on licenses that are not reserved for the entrepreneurs' blocks. Providing benefits only to those designated entities that bid in

^{2/} FNPRM, ¶ 65.

the entrepreneurs' blocks limits the number of licenses that designated entities can realistically expect to win. Designated entities should be able to receive bidding credits, installment payments, and tax certificates when bidding in non-entrepreneurial blocks as well as when bidding in the entrepreneurs' blocks. This proposal would encourage maximum participation by designated entities in spectrum-based services as mandated by Congress.

IV. The Commission Should Not Redesignate The Two BTA Licenses As Regional Licenses And Should License The BTA's Before The NTA's

9. In the FNPRM, the Commission proposes to redesignate the two BTA licenses as regional licenses as a means to achieve larger geographic license sizes. USIMTA/USIPCA oppose this proposal on the basis that larger geographic licenses will undoubtedly be more expensive and therefore unavailable to small businesses that would quickly be outbid for licenses for such larger areas. The public interest is better served by allocating more smaller areas for licenses rather than a fewer number of larger license areas. The greater the number of available licenses, the greater are the opportunities for small businesses and other designated entities to participate in spectrum-based services. Retaining BTA's is in the public interest of ensuring that designated entities have a meaningful opportunity to participate in PCS as mandated by Congress.

10. In addition, there are economic advantages to be gained that are in the public interest by licensing on a smaller rather than larger area basis. The revenue generated by licenses granted in the regional narrowband auction, as a function of population within the area to be served (i.e., expressed as "cents/pop"), significantly exceeded the revenue generated from licenses granted in the nationwide narrowband auction.^{3/} It is evident that licenses for smaller areas are more valuable per pop than licenses for larger areas. Retaining BTA's will generate more revenue for the government than will licensing on a larger scale.

11. As a related matter, the Commission should license the BTA's before the MTA's to give small businesses and designated entities the opportunity to participate before all of the larger licenses are taken by larger companies. Licensing the BTA's last gives the larger companies a head start in providing PCS to the public. The Commission would better serve the public interest of increasing participation in telecommunications by small businesses and other designated entities by giving these

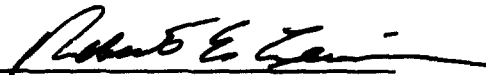
^{3/} See Attached analysis of the approximate generated revenues on a per population basis for the nationwide and regional PCS licenses that have already been auctioned. The first column of the chart identifies either nationwide or individual regional licenses. The second column identifies the individual licenses. The third column, "Spectrum", is the total sum of the amount of frequency that was auctioned (i.e., two 50 kHz licenses equal 100, while one 50 kHz and one 12.5 kHz license equal 62.5). The fourth column consists of the price paid for the license. The fifth column is actually dollars per pop, which was determined by dividing the price paid, for the national or regional license, by the relevant population.

entities the opportunity to bid on PCS licenses before larger area licenses are taken by companies that have a competitive advantage.

V. Conclusion

12. USIMTA/USIPCA commend the efforts the Commission has made toward including designated entities in the narrowband PCS licensing process. However, USIMTA/USIPCA believes the Commission should take more aggressive steps to ensure that designated entities have an opportunity to participate in spectrum-based services as mandated by Congress.

Respectfully submitted,

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Their Counsel

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AREA/REG	LISCENSE	SPECTRUM	RND 104 PRICE	(DOLLARS) CENTS PER POP	REGION/ NATNWDIE HIGH	REGION/ NATNWDIE LOW
NATNWDIE	1	100.000	90000000.000	.317	.317	.317
NATNWDIE	2	100.000	80000000.000	.317	.317	.317
NATNWDIE	3	100.000	80000000.000	.317	.317	.317
NATNWDIE	4	100.000	80000000.000	.317	.317	.317
NATNWDIE	5	100.000	80000000.000	.317	.317	.317
NATNWDIE	6	62.500	47001001.000	.186	.188	.186
NATNWDIE	7	62.500	47505673.000	.188	.188	.186
NATNWDIE	8	62.500	47500000.000	.188	.188	.186
NATNWDIE	10	50.000	37000000.000	.147	.150	.147
NATNWDIE	11	50.000	38000000.000	.150	.150	.147
1	1	100.000	17500000.000	.339	.796	.323
1	2	100.000	24750000.000	.479	.796	.323
1	3	62.500	9471082.000	.183	.381	.154
1	4	62.500	8949543.000	.173	.381	.154
1	5	62.500	8675000.000	.168	.381	.154
1	6	62.500	17085001.000	.331	.381	.154
2	1	100.000	18400000.000	.355	.796	.323
2	2	100.000	31300000.000	.604	.796	.323
2	3	62.500	11800007.000	.228	.381	.154
2	4	62.500	11543007.000	.223	.381	.154
2	5	62.500	8000013.000	.154	.381	.154
2	6	62.500	18770005.000	.362	.381	.154
3	1	100.000	16810000.000	.323	.796	.323
3	2	100.000	20934001.000	.555	.796	.323
3	3	62.500	9291000.000	.178	.381	.154
3	4	62.500	10057004.000	.193	.381	.154
3	5	62.500	9500000.000	.182	.381	.154
3	6	62.500	17085001.000	.328	.381	.154
4	1	100.000	17340000.000	.352	.796	.323
4	2	100.000	28560000.000	.580	.796	.323
4	3	62.500	8250000.000	.168	.381	.154
4	4	62.500	8791001.000	.179	.381	.154
4	5	62.500	8262000.000	.168	.381	.154
4	6	62.500	17480000.000	.355	.381	.154
5	1	100.000	22549020.000	.472	.796	.323
5	2	100.000	38000000.000	.796	.796	.323
5	3	62.500	14857003.000	.311	.381	.154
5	4	62.500	14281111.000	.299	.381	.154
5	5	62.500	14281001.000	.299	.381	.154
5	6	62.500	18201000.000	.381	.381	.154

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AREA/REG	LISCENSE	SPECTRUM	RND 104 PRICE	(DOLLARS) CENTS PER POP	REGION/ NATNWISE HIGH	REGION/ NATNWISE LOW
5	2	100.000	38000000.000	.796	.796	.323
2	2	100.000	31300000.000	.604	.796	.323
4	2	100.000	28560000.000	.580	.796	.323
3	2	100.000	28934001.000	.555	.796	.323
1	2	100.000	24750000.000	.479	.796	.323
5	1	100.000	22549020.000	.472	.796	.323
2	1	100.000	18400000.000	.355	.796	.323
4	1	100.000	17340000.000	.352	.796	.323
1	1	100.000	17500000.000	.339	.796	.323
3	1	100.000	16810000.000	.323	.796	.323
NATNWISE	1	100.000	80000000.000	.317	.317	.317
NATNWISE	2	100.000	80000000.000	.317	.317	.317
NATNWISE	3	100.000	80000000.000	.317	.317	.317
NATNWISE	4	100.000	80000000.000	.317	.317	.317
NATNWISE	5	100.000	80000000.000	.317	.317	.317
5	5	62.500	18201000.000	.381	.381	.154
2	6	62.500	18770005.000	.362	.381	.154
4	6	62.500	17480000.000	.355	.381	.154
1	6	62.500	17085001.000	.331	.381	.154
3	6	62.500	17085001.000	.328	.381	.154
5	3	62.500	14857003.000	.311	.381	.154
5	4	62.500	14281111.000	.299	.381	.154
5	5	62.500	14281001.000	.299	.381	.154
2	3	62.500	11800007.000	.228	.381	.154
2	4	62.500	11543007.000	.223	.381	.154
3	4	62.500	10057004.000	.193	.381	.154
NATNWISE	7	62.500	47505673.000	.188	.188	.186
NATNWISE	8	62.500	47500000.000	.188	.188	.186
NATNWISE	6	62.500	47001001.000	.106	.188	.186
1	3	62.500	9471082.000	.183	.381	.154
3	5	62.500	9500000.000	.182	.381	.154
4	4	62.500	8791001.000	.179	.381	.154
3	3	62.500	9291000.000	.178	.381	.154
1	4	62.500	8949543.000	.173	.381	.154
1	5	62.500	8675000.000	.168	.381	.154
4	5	62.500	8262000.000	.168	.381	.154
4	3	62.500	8250000.000	.168	.381	.154
2	5	62.500	8000013.000	.154	.381	.154
NATNWISE	11	50.000	38000000.000	.150	.150	.147
NATNWISE	10	50.000	37000000.000	.147	.150	.147